



November 8, 2010

Water Docket  
Environmental Protection Agency  
Mail code 2822T  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

RE: TMDL for the Chesapeake Bay Watershed  
(Docket ID No. EPA –R03-OW- 2010-0736)

Dear Madam or Sir:

On behalf of the Virginia Chamber of Commerce (VCC), thank you for the opportunity to comment on the Chesapeake Bay Watershed TMDL by the Environmental Protection Agency (EPA). VCC values the Chesapeake Bay and understands the importance to have a healthy, vibrant Bay both environmentally and economically. The Virginia Chamber of Commerce supports efforts to ensure a clean and healthy Chesapeake Bay, including reasonable measures to recover and reclaim, as well as to conserve and maintain valuable natural resources. However, VCC has major concerns regarding the economic impact of the proposed TMDL on the Commonwealth of Virginia.

As the voice of business in Virginia, VCC is concerned over how the proposed TMDL will strain an already stressed economy. This mandate will have broad reaching, adverse effects on Virginia businesses and on state and local government. **Regrettably, the EPA has chosen not to conduct cost analysis for the Bay TMDL, and we believe this mandate will not only prevent growth, but extend the so-called jobless recovery period.**

For that reason, VCC strongly urges the EPA to be responsive to the many concerns of the broad based business community, localities and other affected source sectors on the economic impact and cost associated with the implementation of the TMDL. Surely the EPA can slow down enough to find better balance between the economic impact of the TMDL and the “immediate” clean up needs of the Bay.

It has been well documented, and the EPA has acknowledged that, at tremendous expense, Virginia has made impressive progress in reducing nitrogen, phosphorous, and sediment discharges into the Chesapeake Bay and its tributaries from all source sectors since 1985. Virginia nitrogen loads have been reduced from almost 90 million pounds per year to just above 60 million pounds per year.

Phosphorous loads have been reduced from almost 12 million pounds per year to just over 6 million pounds per year. And, the Commonwealth and its citizens have made a big public commitment to continue the state's own pollution diet. Virginia does not need, nor should the EPA demand additional draconian clean up actions at this time, especially with no regard to the economic impact and costs of their demands.

**VCC also must express a major concern about the number of proven deficiencies in the Chesapeake Bay Model, which will have a significant impact on the pollutant loading of the Watershed Implementation Plans being developed by the Bay states.** The independent United States Geological Survey has questioned the accuracy of the impervious surface data in the model, and others have questioned the accuracy of the agricultural BMP projections. Those two (2) flawed data points are just a sampling of other significant flaws in the model that are resulting in lower nutrient caps for all Bay states. For this reason alone, the EPA should delay implementing the TMDL. Finalizing the TMDL before finalizing the modeling makes no sense.

**The Virginia Chamber of Commerce is also very disturbed by the short 45 days for the public to provide comments on the TMDL.** Given the complex nature of the TMDL, and the quantified significant costs to all involved, such a limited public comment period is inadequate and should be immediately extended. For the EPA to impose this level of impact on the well-being of the Commonwealth, its citizens and its businesses, while ignoring a notice requirement and cost analysis requirements of federal law (the Administrative Procedures Act and the Small business Regulatory Act), is unacceptable.

**The VCC would also question the wisdom and authority of the EPA to mandate that private owners reduce or retrofit their property's impervious surfaces, as may be imposed in the proposed backstop allocations.** Both the U.S. Constitution and Virginia Constitution protect private property owners from a "taking without just compensation" by the government. The very high estimated costs associated with the retrofit requirements or mandates in the proposed backstop allocations clearly approach a "taking without just compensation" of private property. VCC would urge the EPA to seek other less expensive and less intrusive solutions to the cleaning of the Bay and its tributaries.

Thank you for this opportunity to comment on this complex TMDL and the many uncertainties embedded in its provisions.

Best regards,

A handwritten signature in dark ink, appearing to read "Barry S. DuVal". The signature is fluid and cursive, with the first name "Barry" being more prominent.

Barry DuVal  
President and CEO